

Ordinance No. \_\_\_\_\_

Passed \_\_\_\_\_, 20\_\_\_\_

**ORDINANCE NO. E-13**

**AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$1,035,000 TO REFUND AT A LOWER INTEREST COST CERTAIN OF THE CITY'S OUTSTANDING WATER SYSTEM REFUNDING REVENUE BONDS, SERIES 2002, DATED AS OF MARCH 1, 2002, AND DECLARING AN EMERGENCY.**

WHEREAS, pursuant to Ordinance No. L-01 passed October 1, 2001 (the Refunding Bond Ordinance), the City issued its Water System Refunding Revenue Bonds, Series 2002, in the aggregate principal amount of \$8,135,000, dated as of March 1, 2002 (the Outstanding 2002 Bonds), for the purpose of advance refunding the City's Water System Improvement Revenue Bonds, Series 1994, dated as of June 1, 1994, which were issued for the purpose of improving the municipal water system (the improvement); and

WHEREAS, this Council finds and determines that it will be in the City's best interest to issue general obligation bonds in accordance with Chapter 133 of the Ohio Revised Code in the maximum aggregate principal amount of \$1,035,000 (the Bonds) to refund at a lower interest cost certain of the Outstanding 2002 Bonds (the Refunded Bonds), which Refunded Bonds are currently subject to prior redemption at the option of the City in whole or in part on any date at a redemption price of 101% of par plus interest accrued to their redemption date, and to pay any expenses relating to that refunding and the issuance of the Bonds; and

WHEREAS, this Council plans to issue bonds, simultaneously with this issue of Bonds, that will be offered to the Treasury Investment Board of the City or by private sale in an amount necessary to refund the remaining portion of the Outstanding 2002 Bonds that are not refunded by the Bonds; and

WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to this Council that the estimated life or period of usefulness of the improvement was, at the time the original indebtedness for the improvement was incurred, at least five years, and that the maximum maturity of the Bonds is June 9, 2024;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Orrville, Wayne County, Ohio, that:

Section 1: Definitions and Interpretation.

In addition to the words and terms elsewhere defined in this Ordinance, unless the context or use clearly indicates another or different meaning or intent:

“Authorized Denominations” means one bond in the aggregate principal amount of the Bonds with principal payable on each Principal Payment Date.

“Bond proceedings” means, collectively, this Ordinance, the Final Terms Certificate and such other proceedings of the City, including the Bonds, that provide collectively for, among other things, the rights of holders and beneficial owners of the Bonds.

“Bond Register” means all books and records necessary for the registration, exchange and transfer of Bonds as provided in Section 5.

“Bond Registrar” means the Director of Finance of the City or a bank or trust company authorized to do business in the State of Ohio designated by the Director of Finance in the Final Terms Certificate as the initial authenticating agent, bond registrar, transfer agent and paying agent for the Bonds and until appointment of a successor Bond Registrar and, thereafter, “Bond Registrar” shall mean the successor Bond Registrar.

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“Bonds” shall have the meaning set forth in Section 2.

“Closing Date” means the date of physical delivery of, and payment of the purchase price for, the Bonds, which date shall not be later than October 1, 2013.

“Code” means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“Final Terms Certificate” means the certificate authorized by Section 6 to be executed by the Director of Finance, setting forth and determining those terms or other matters pertaining to the Bonds and their issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined therein.

“Interest Payment Dates” means, unless otherwise determined by the Director of Finance in the Final Terms Certificate, June 1 and December 1 of each year that the Bonds are outstanding, commencing June 1, 2013.

“Original Purchaser” means First National Bank, Orrville, Ohio.

“Principal Payment Dates” means, unless otherwise determined by the Director of Finance in the Final Terms Certificate, December 1 in each of the years from and including 2013 to and including 2022.

“Redemption Date” means a date to be determined by the Director of Finance and set forth in the Final Terms Certificate, which date shall not be earlier than the Closing Date and shall not be later than November 1, 2013.

“Refunded Bonds” means the portion of the City’s Outstanding 2002 Bonds to be refunded at a lower interest cost by the Bonds.

“Regulations” means Treasury Regulations issued pursuant to the Code or to the statutory predecessor of the Code.

The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

Section 2: Authorized Principal Amount and Purpose: Application of Proceeds. This Council determines that it is necessary and in the best interest of the City to issue bonds of this City in the maximum aggregate principal amount of \$1,035,000 (the Bonds) to refund at a lower interest cost the Refunded Bonds, including the payment of expenses relating to the refunding of the Refunded Bonds and the issuance of the Bonds. The Bonds shall be issued pursuant to Chapter 133 of the Ohio Revised Code, this Ordinance and the Final Terms Certificate.

The aggregate principal amount of Bonds to be issued shall not exceed the maximum aggregate principal amount specified in this Section 2 and shall be an amount determined by the Director of Finance in the Final Terms Certificate to be required to be issued at this time for the purpose stated in this Section 2, taking into account the costs of refunding the Refunded Bonds and the costs of issuance of the Bonds.

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The proceeds from the sale of the Bonds received by the City shall be paid into the proper fund or funds, and those proceeds are hereby appropriated and shall be used for the purpose for which the Bonds are being issued, including without limitation, the payment of the costs of issuing and servicing the Bonds, printing and delivery of the Bonds, legal services including obtaining the approving legal opinion of bond counsel, any paying agent, and all other financing costs (as defined in Section 133.01 of the Ohio Revised Code) and costs incurred incidental to those purposes. Any portion of those proceeds received by the City representing premium or accrued interest shall be paid into the Bond Retirement Fund.

The expenditure of the amounts necessary to pay any financing costs (as defined in Section 133.01 of the Ohio Revised Code) in connection with the Bonds is authorized and approved, and the Director of Finance is authorized to provide for the payment of any such amounts and costs from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

Section 3: Denominations: Dating: Principal and Interest Payment and Prepayment Provisions.  
The Bonds shall be issued in one lot and only as fully registered bonds, in the Authorized Denominations, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as provided in the Final Terms Certificate, provided that their dated date shall not be more than sixty (60) days prior to the Closing Date.

(a) Interest Rates and Payment Dates. The Bonds shall bear interest at the rate of 2.125% per year (computed on the basis of a 360-day year consisting of twelve 30-day months). Interest on the Bonds shall be payable at such rate on the Interest Payment Dates until the principal amount has been paid or provided for. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date.

(b) Principal Payment Schedule. The Bonds shall mature on the Principal Payment Dates in principal amounts as shall be determined by the Director of Finance, subject to subsection (c) of this Section, in the Final Terms Certificate, which determination shall be consistent with the best interest of and financial advantages to the City.

(c) Conditions for Establishment of Principal Payment Dates and Amounts. The principal amount of Bonds maturing on each Principal Payment Date as determined by the Director of Finance in the Final Terms Certificate, shall be such as to demonstrate net present value savings to the City due to the refunding of the Refunded Bonds, taking into account all expenses related to that refunding and issuance of the Bonds.

(d) Payment of Debt Charges. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent, by check or draft mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register at the close of business on the 15<sup>th</sup> day of the calendar month next preceding that Interest Payment Date.

(e) Prepayment Provisions. The Bonds shall not be subject to prepayment prior to maturity.

Section 4: Execution and Authentication of Bonds: Appointment of Bond Registrar. The Bonds shall be signed by the Mayor and the Director of Finance, in the name of the City and in their official capacities, provided that either or both of those signatures may be a facsimile. The Bonds shall be issued in the Authorized Denominations and numbers as requested by the Original Purchaser and approved by the Director of Finance, shall be numbered as determined by the Director of Finance in order to distinguish each Bond from any other Bond, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to the Chapter 133 of the Ohio Revised Code, this Ordinance and the Final Terms Certificate.



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The Director of Finance shall be the initial Bond Registrar unless the Director of Finance designates a bank or trust company authorized to do business in the State of Ohio to act as the initial Bond Registrar in the Final Terms Certificate.

No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond proceedings unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Bond proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as an agent of the Bond Registrar and approved by the Director of Finance on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

Section 5: Registration; Transfer and Exchange; Book Entry System.

(a) Bond Register. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep the Bond Register at its designated office. Subject to the provisions of Section 3(d), the person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of the Bond proceedings. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

(b) Transfer and Exchange. Any Bond may be exchanged for Bonds of any Authorized Denomination upon presentation and surrender at the designated office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the designated office of the Bond Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any Authorized Denomination or Denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond proceedings. The exchange or transfer shall be without charge to the owner, except that the City and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under the Bond proceedings as the Bonds surrendered upon that exchange or transfer.

Section 6: Sale of the Bonds to the Original Purchaser. The Director of Finance is authorized to sell the Bonds at private sale to the Original Purchaser at a purchase price, not less than 97% of the aggregate principal amount thereof, as shall be determined by the Director of Finance in the Final Terms Certificate, plus accrued interest on the Bonds from their date to the Closing

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Date, and shall be awarded by the Director of Finance, in accordance with law and the provisions of this Ordinance and in accordance with her determination of the best interests of and financial advantages to the City and its taxpayers, taking into account conditions then existing in the financial markets, with and upon such other terms as are required or authorized by this Ordinance to be specified in the Final Terms Certificate. The Director of Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Bonds with one or more other bond issues of the City into a consolidated bond issue pursuant to Section 133.30(B) of the Ohio Revised Code in which case a single Final Terms Certificate may be utilized for the consolidated bond issue if appropriate and consistent with the terms of this Ordinance.

The Director of Finance shall sign and deliver the Final Terms Certificate and shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the Original Purchaser upon payment of the purchase price.

The Mayor, the Director of Finance, the Director of Law, and other City officials, as appropriate, each are authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

Section 7: Provisions for Tax Levy. During the year or years in which the Bonds are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Bonds when and as the same fall due. In each year to the extent the income from the water system is available for the payment of the debt charges on the Bonds and is appropriated for that purpose, the amount of the tax shall be reduced by the amount of the income so available and appropriated.

Section 8: Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Code or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Bonds will not be an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Director of Finance or any other officer of the City having responsibility for issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation (including specifically treatment or designation of the Bonds as "qualified tax-exempt obligations"),



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choice, consent, approval, or waiver on behalf of the City with respect to the Bonds as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Bonds or interest thereon or assuring compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties with respect to the Bonds, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments with respect to the Bonds, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Bonds.

Each covenant made in this Section with respect to the Bonds is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Bonds (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Bonds from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this Section to take with respect to the Bonds.

Section 9: Call for Redemption. Acting pursuant to the Refunding Bond Ordinance and the Trust Indenture dated as of June 1, 1994 (the Original Indenture) between the City and The Bank of New York Mellon Trust Company, N.A., successor to J.P. Morgan Trust Company, National Association, as Trustee, as supplemented by the First Supplemental Trust Indenture dated as of March 1, 2002 (the First Supplement and, together with the Original Indenture, the Indenture) between the City and the Trustee, this Council determines that, subject to the determination of the Director of Finance that the interest rate of the Bonds will enable the City to obtain an interest rate savings on a net present value, it is necessary and in the best interest of the City to refund the Refunded Bonds and to redeem the Refunded Bonds by optional redemption and the Refunded Bonds are hereby called for redemption on the Redemption Date, at the redemption price of 101% of the principal amount thereof plus accrued interest to the Redemption Date. The Director of Finance is hereby authorized and directed to cause those Refunded Bonds to be called for redemption on the Redemption Date, and arrange for the notice of redemption to be given in accordance with the applicable provisions of the Refunding Bond Ordinance and the Indenture.

Section 10: Certification and Delivery of Ordinance and Final Terms Certificate. The Director of Finance is directed to promptly deliver a certified copy of this Ordinance and a copy of the Final Terms Certificate to the County Auditor of Wayne County, Ohio.

Section 11: Retention of Bond Counsel. The legal services of Squire Sanders (US) LLP, as bond counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Bonds and the rendering of the necessary legal opinion upon the delivery of the Bonds. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services, whether or not the Bonds are ever issued. The Director of

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Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

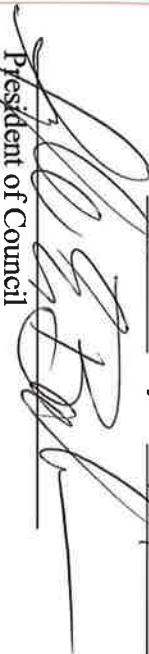
Section 12: Satisfaction of Conditions for Bond Issuance. This Council determines that all acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 7) of the City are pledged for the timely payment of the debt charges on the Bonds; that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds; and that the Bonds are being authorized and issued pursuant to Chapter 133 of the Ohio Revised Code, this Ordinance and the Final Terms Certificate.

Section 13: Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this ordinance were taken in an open meeting of this Council or of any of its committees and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

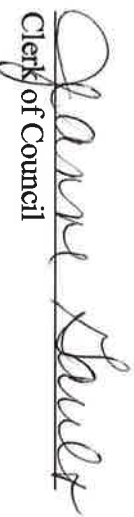
Section 14: Captions and Headings. The captions and headings in this ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this ordinance unless otherwise indicated.

Section 15: Declaration of Emergency. Effective Date. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this ordinance is required to be immediately effective in order to issue and sell the Bonds, which is necessary to enable the City to refund at a lower interest cost the Refunded Bonds upon terms in the best interest of and advantageous to the City and thereby to achieve interest rate savings available under current favorable market conditions; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed this 18<sup>th</sup> day of March, 2013.

  
President of Council

Attest:

  
Clerk of Council

Approved:

  
Mayor

3/18/13  
Date